

F. Sabra Zahid v Judicial Service Commission

RTICAppeal (In-Person)/237/2018 - Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure) – Heard as part of a formal meeting of the Commission on 19.06.2018

Chairperson: Mr. Mahinda Gammampila
Commission Members: Ms. Kishali Pinto-Jayawardena
Dr. Selvy Thiruchandran
Justice Rohini Walgama
Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Ms. F. Sabra Zahid
Notice Issued to: H Sanjeewa Somaratne, Deputy Secretary, Judicial Service Commission (Designated Officer),

Appearance/ Represented by:

Appellant - Ms. F. Sabra Zahid
Ms. Ermiza Tegal
Public Authority - D. M. D. L. Bandara, Senior Assistant Secretary, Judicial Service Commission

RTI Request filed on	24.11.2017
IO responded on	06.12.2017
First Appeal to DO filed on	13.12.2017
DO responded on	23.01.2018
Appeal to RTIC filed on	02.03.2018

Brief Factual Background:

The Appellant by information request dated 24.11.2017 requested the following;

1. Number and nature of complaints received against Quazi judges in the year 2016, with a breakdown for each jurisdiction.

2. Number and nature of complaints that are ongoing (i.e. after the complaint has been lodged but the matter has not been resolved) as at November 2017.
3. Number and nature of complaints pending for over two years as at November 2017.
4. Number and nature of disciplinary actions taken by Judicial Service Commission against Quazi's in the years 2012, 2013, 2014, 2015 and 2016 (Details for each year separately including the specific name of the Quazi court and the nature of disciplinary action taken)

All information is requested in a table format and to be certified by the PA to be true and correct according to available records.

5. Certified copies of all decisions against Quazi judges in the period 2012 to 2016 in proof of answer to request 4 above

The IO responding on 06.12.2017 had denied the information citing Section 5 (1) (j). Thereafter the Appellant lodged an appeal with the DO on 13.12.2017. The DO affirmed the decision of the IO on 23.01.2018. The Appellant preferred an appeal to the Commission on 02.03.2018.

Matters Arising During the Course of the Hearing:

The PA submitted that the information had been denied on the basis that it relates to interdisciplinary issues. It was queried from the PA as to whether it takes action in relation to the complaints against Quazi judges to which the PA responded stating that it does take action however that information is not publicized. The PA submitted that the provision of this information would be 'prejudicial to the maintenance of the authority and impartiality of the judiciary.' The PA submitted that the entertainment of information requests relating to disciplinary action may lead to a situation where even charge sheets issued against judges which constitute extremely sensitive information will have to be disclosed which will result in extreme prejudice caused with respect to these inquiries. The PA further submitted that these are internal inquiries presided over by the Chief Justice.

In the submissions made on behalf of the Appellant in response to these concerns raised by the PA, it was stated that several recorded cases of complaints made against Quazi Judges are available, based on research conducted, and that the persons who made the complaints are unaware as to the status of/ progress made in relation to the inquiries conducted in response to these complaints. It was submitted that the provision of the information requested would be in furtherance of transparency and accountability on the part of the PA. It was further submitted that the disclosure of the information requested (which effectively encompasses the progress, status and timeline of processing the complaints) will not undermine the 'authority and impartiality of the judiciary' but would enhance public confidence in the system as complainants would know what action and when such action is being taken. Further at present, the PA submitted that the only information made public in relation to the Quazi judges was in relation to their transfers.

At this point the PA was queried as to whether statistical information such as that pertaining to the information request is indicated in the Annual Reports of the PA. The PA submitted that it contains data in relation to the performance of the PA. When queried as to the specifics of the

data include in relation to performance the PA submitted that it contains statistics in relation to the number of cases. It was then queried from the PA as to whether any information in relation to cases specific to Quazi judges is included to which the PA was unable provide a categorical response in the affirmative or negative. The Commission noted that if the information had been recorded in the annual reports of the PA then it would not be necessary to consider whether or not the exemption applies since the information would be in the public domain.

Written Submissions on behalf of the Appellant were tendered before the Commission.

Order:

By letter dated 18.06.2018, the PA has declined to issue the information on the basis that it 'includes sensitive information relating to Quazi judges' and citing Section 5 (1) (j) of the RTI Act. Section 5 (1) (j) of the Act exempts disclosure in instances where disclosure 'would be in contempt of court or prejudicial to the maintenance of the authority and impartiality of the judiciary.'

As the PA has submitted that its annual reports contain information in relation to its performance there arises a possibility that statistics in relation to the information request may be available of public record. As the PA is unable to provide a definitive response as to whether information specific to Quazi judges is included in its annual reports , it is necessary to ascertain, whether the subject matter of the information may have been included making it public information by examining the annual reports of the PA. For this purpose the PA is directed to provide its annual reports the Commission.

As it was submitted on behalf of the Appellant that research on her part disclosing complaints of irregular conduct on the part of Quazi judges is available, it is directed that such material is also presented before the Commission.

Attention of the PA is drawn to Paragraphs 5 of Rule 20 (Gazette No. 2004/66, 03.02.2017) which states as follows;

The Commission may require the parties to supply such additional information or documents relating to the Appeal as it deems necessary, including any information claimed by the Public Authority to be exempt in accordance with Section 5 of the Act, and, where necessary, the Commission shall take the required steps to ensure the confidentiality of any such information.

The Written Submissions of the Appellant are accepted of record and the provision of a copy to the PA is noted of record.

The Appeal is adjourned.

Next Date of Hearing: 07.08.2018

RTIC Appeal(In-Person) /237/2018 - *Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of a formal meeting of the Commission on 07.08.2018

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr Selvy Thiruchandran
Justice Rohini Walgama

Present: Director-General Piyathissa Ranasinghe

Appearance/ Represented by:

Appellant - Ms F Sabra Zahid
Ms Ermiza Tegal
Public Authority - D M D L Bandara, Senior Assistant Secretary, JSC

Matters Arising During the Hearing:

The PA requested for more time to submit the requested information to the Commission and clarified that, in any event, the information would only be with regard to statistical aspects as the release of substantive information relating to internal disciplinary issues on the functioning of the Quazi Courts would be “prejudicial to the maintenance of the authority and impartiality of the Judiciary” as contemplated by Section 5(1)(j) of the Act.

In response to the Commission’s direction on the previous hearing, the Appellant submitted a report of a complaint made against a Quazi Court Judge on 26.11.2016, and alleged that no action had been taken with regard to the complaint as of date. It was queried by the Commission from the Deputy Secretary of the PA as to whether the PA has, taken action in relation to the complaints made by members of the public against Quazi judges to which the PA reiterated that it does take action in that regard; however that information is not publicized because that may result in extreme prejudice caused with respect to these inquiries.

Minute of the Record

The request of the PA for an extension of time is granted.

At the Right to Information Commission of Sri Lanka

The Appellant is directed to submit findings in relation to the practices of other countries with regard to disclosure of statistical information/ other information of disciplinary action taken against Judges of the Quazi Courts.

The Appeal is adjourned.
Next date of hearing: 02.10.2018

RTIC Appeal (In-Person)/237/2018 - *Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of a formal meeting of the Commission on 02.10.2018.

Chairperson: Mr Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Mr S.G. Punchihewa
Dr Selvy Thiruchandran
Justice Rohini Walgama

Director-General: Mr Piyathissa Ranasinghe

Appellant: Sabra Zahid
Notice Issued to: Judicial Services Commission

Appearance/ Represented by:
Appellant - Absent
Public Authority - D. M. D. C. Bandara, Senior Assistant Secretary, JSC

RTI Request filed on	24.11.2017
IO responded on	06.12.2017
First Appeal to DO filed on	13.12.2017
DO responded on	23.01.2018
Appeal to RTIC filed on	02.03.2018

Matters Arising during the Hearing

The PA submitted that it is refusing to provide the information on the basis that the information requested falls within Section 5(1)(j) of the RTI Act.

The PA was queried as to why there was resistance on the part of the PA to provide the information given that it concerns statistical data. The PA contended that the refusal of information under 5(1)(j) of the Act is not based on the fact of whether the information requested is statistical or not, but on the grounds that in the event there are a higher number of complaints against *quasi-judges*, this would be prejudicial to the functioning of the Judiciary. On being directed to further clarify the applicability of the exemption, the Representative of the PA submitted that he cannot elaborate on the reasoning behind the decision of the PA that it falls within Section 5 (1) (j) but could only submit that the direction of the PA was to plead the exemption under 5(1)(j) and submitted that he cannot elaborate further on this pleading of this exemption without the permission of the PA.

The PA submitted that the refusal of information was the decision of the JSC as the sole authority established with the purpose of safeguarding the independence of the judiciary.

Order

The Public Authority has relied on the exemption pleaded in Section 5(1) (j) (i.e. 'prejudicial to the maintenance of the authority and impartiality of the judiciary'), to refuse the information requested. It has also stated that statistical information may come within the realm of information that may be refused under the Act based on the named exemptions in Section 5(1). Under the RTI Act, if a Public Authority pleads an exception the burden is incumbent upon the PA to justify the pleading of such exemption.

Accordingly, in this instance and if Section 5(1)(j) is relied on, the Public Authority must establish how the release of the instant information regarding the complaints received against *Quazi* judges in the year 2016, will result in prejudice so caused, as assessed against the stipulation in Section 5(4) that ' Notwithstanding the provisions of subsection (1), a request for information shall (emphasis ours) not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure.'

Further hearing adjourned for a final date, namely 21 Nov, 2018 at 10.30 am to consider all submissions of parties and to conclude the appeal.

NB; Attorney-at-law for the Appellant, handed over a further Written Submission in this appeal subsequent to the hearing, having being delayed in appearing at the mandated time. The said Written Submission is noted of record.

Next Hearing date 21 Nov, 2018 at 10.30 am.

RTIC Appeal (In-Person)/237/2018 - *Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of a formal meeting of the Commission on 21.11.2018.

Chairperson: Mr Mahinda Gammampila

Commission Members: Ms Kishali Pinto-Jayawardena

Mr S.G. Punchihewa

Dr Selvy Thiruchandran

Justice Rohini Walgama

Director-General: Mr. Piyathissa Ranasinghe

Appellant: Ms. Sabra Zahid

Notice Issued to: Secretary, Judicial Services Commission

Appearance/ Represented by:

Appellant - Ms. Sabra Zahid AAL and Mr. Hafeel Farisz AAL

Public Authority - Mr. D. M. D. C. Bandara, Senior Assistant Secretary, JSC

Matters Arising during the Hearing

Counsel for the Appellant submitted that the information requested is of significant value to the Muslim community as it relates to the MMDA and the functioning of the *quasi* courts. He contended that there has been significant opacity regarding the functioning of these quasi courts and as such the provision of this information would be in the public interest. He further submitted that by written submissions dated 2 October 2018, it was demonstrated how the exemption cited by the PA i.e. Section 5(1)(j) of the RTI Act pleaded by the PA does not apply in this regard. Counsel for the Appellant noted that the release of information regarding the disciplinary inquiries conducted against judicial officers will not be prejudicial to the functioning of the judiciary, but rather be in furtherance of the independence of the judiciary.

The PA submitted that the JSC has taken prompt disciplinary against any judicial officer acting in breach the established code of conduct but that it was unable to release this information to the public.

The Appellant noted that confidence of the public in the JSC will increase if this information is released as it will demonstrate prompt action taken by the JSC. He further submitted that unlike for judges appointed to courts of law, appointments as quasi judges do not require the fulfilment of established criteria. Therefore, the burden is on the public to ensure that there are proper standards maintained is paramount.

Counsel for the PA noted that he is unable to decide on the release or otherwise of the information, without consulting the Members of the JSC and required a written directive from the RTI Commission to that effect.

The JSC was directed to bring this matter to the attention of the JSC and to inform the Commission.

The Appeal is adjourned.

Next date of hearing: 16.01.2019
